



# RESTRICTION ELECTION FACSIMILE TRANSMISSION

DATE:

FROM/ATTORNEY:

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PHONE NUMBER:

TO EXAMINER: Mary K Zeman

ART UNIT: 1643

SERIAL NUMBER: 08/928,757

FAX/TELECOPIER NUMBER: (703) 305-3704

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COMMENTS: \_\_\_\_\_

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UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY DOCKET NO.
08/928,757	09/12/97	MAERTENS	1487-17

EXAMINER

HM21/0327

NIXON & VANDERHYE  
1100 NORTH GLEBE ROAD  
8TH FLOOR  
ARLINGTON VA 22201

ART UNIT	PAPER NUMBER
1643	4

DATE MAILED: 08/27/98

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 9/12/97

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 C.F.R. 1.136(a).

Disposition of Claims

- ☒ Claim(s) 49-56 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
☐ Claim(s) \_\_\_\_\_ is/are allowed.  
☐ Claim(s) \_\_\_\_\_ is/are rejected.  
☐ Claim(s) \_\_\_\_\_ is/are objected to.  
☒ Claim(s) 49-56 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.  
☐ The specification is objected to by the Examiner.  
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.  
☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.  
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892  
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
☐ Interview Summary, PTO-413  
☐ Notice of Draftsperson's Patent Drawing Review, PTO-948  
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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## **DETAILED ACTION**

### ***Election/Restriction***

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Each particular vaccine composition set forth in the claims is distinct because each comprises a differing protein or peptide, and the immunological response to one peptide does not necessarily predict the immunological response to another peptide.

A vaccine composition comprising E1.

A vaccine composition comprising E2.

A vaccine comprising E1/E2 complexes.

Species b of claim 52.

Species c of claim 52.

Species d of claim 52.

Species e of claim 52.

Species f of claim 52.

SEQ ID NO: 56.

SEQ ID NO: 57.

SEQ ID NO: 58.

SEQ ID NO: 59.

SEQ ID NO: 53.

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SEQ ID NO: 66.

SEQ ID NO: 67.

SEQ ID NO: 68.

SEQ ID NO: 73.

SEQ ID NO: 72.

SEQ ID NO: 86.

SEQ ID NO: 87.

SEQ ID NO: 88.

SEQ ID NO: 83.

SEQ ID NO: 82.

Epitope F of claim 54.

Epitope G of claim 54.

Epitope H or C of claim 54.

Epitope I of claim 54.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 49 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon,

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including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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4. **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Donald E. Adams, Ph.D., Supervisory Patent Examiner at Donald.Adams@uspto.gov or 703-308-0570. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary K Zeman whose telephone number is (703) 305-7133. The examiner can be reached between the hours of 8:00 am and 5:30 pm Monday through Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knode, can be reached on (703) 308-4311.

The fax number for this Art Unit is (703) 305-7401.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

mkz  
August 20, 1998

  
ANTHONY C. CAPUTA  
PRIMARY EXAMINER